



Respondent filed a motion to dismiss the petition on April 8, 2014, arguing, among other things, that the petition is untimely. Petitioner did not file an opposition to the motion.<sup>2</sup>

Section 2244(d) imposes a one-year statute of limitation for the filing of habeas corpus petitions by state prisoners. 28 U.S.C. § 2244(d).<sup>3</sup> The one-year limitation period in petitioner's case began to

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district court). For present purposes, the Court assumes that petitioner handed each of his petitions to the proper prison official for mailing on the date he signed them.

<sup>2</sup> Pursuant to Local Rule 7-12, failure to file an opposition may be deemed consent to the granting of the motion. Therefore, the motion to dismiss also may be granted on the basis of petitioner's failure to oppose it.

<sup>3</sup> It provides:

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d)(1) & (2).

1 run on the date on which the judgment became final. 28 U.S.C. §  
2 2244(d)(1)(A).

3 The California Court of Appeal affirmed petitioner's conviction  
4 on February 28, 2012, and, on May 16, 2012, the California Supreme  
5 Court denied review. [Petition, Attachment]. Petitioner's conviction  
6 became final ninety days later - on August 14, 2012 - when the time  
7 for filing a petition for a writ of certiorari expired. Caspari v.  
8 Bohlen, 510 U.S. 383, 390 (1994); Wixom v. Washington, 264 F.3d 894,  
9 897 (9th Cir. 2001), cert. denied, 534 U.S. 1143 (2002). Absent  
10 tolling, the limitation period expired one year later, on August 14,  
11 2013. See Patterson v. Stewart, 251 F.3d 1243, 1245-1246 (9th Cir.  
12 2001), cert. denied, 534 U.S. 978 (2001).

13 This petition, however, was not filed until December 23, 2013,  
14 more than four months after the limitation period expired. Absent  
15 grounds for statutory or equitable tolling of the limitation period,  
16 the petition is time-barred.

17 The limitation period does not run while a properly filed state  
18 application for post-conviction relief is pending. 28 U.S.C. §  
19 2244(d)(2). See Carey v. Saffold, 536 U.S. 214, 218-219 (2002).

20 On March 13, 2013, petitioner filed a petition in the California  
21 Superior Court. [LD 6]. That petition was denied on April 16, 2013.  
22 [LD 7]. Tolling the limitation period for time that this petition was  
23 pending, petitioner had an additional 34 days - until September 17,  
24 2013 - to file his federal petition. Even after taking statutory  
25 tolling into account, however, petitioner did not file his federal  
26 petition until more than three months after the limitation period had  
27 expired.

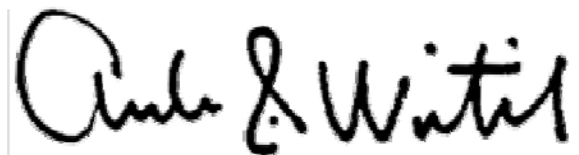
1 The limitation period also can be equitably tolled. Petitioner  
2 is entitled to equitable tolling only if he shows "(1) that he has  
3 been pursuing his rights diligently, and (2) that some extraordinary  
4 circumstance stood in his way." Holland v. Florida, 560 U.S. 631, 649  
5 (2010)(quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)).  
6 "Equitable tolling is only appropriate if 'extraordinary circumstances  
7 beyond a prisoner's control make it impossible to file a petition on  
8 time." Randle v. Crawford, 604 F.3d 1047, 1057 (9th Cir.) (quotation  
9 marks and citation omitted), cert. denied, 131 S.Ct. 474 (2010).

10 Petitioner does not allege, and nothing in the record suggests,  
11 that extraordinary circumstances prevented him from timely filing a  
12 federal petition. Accordingly, he is not entitled to equitable  
13 tolling.

14 For the foregoing reasons, the petition is dismissed as untimely.

15 **It is so ordered**

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17 Dated: May 20, 2014



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20 Andrew J. Wistrich  
United States Magistrate Judge  
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